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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OPERATING ENGINEERS' HEALTH AND
WELFARE TRUST FUND FOR NORTHERN
CALIFORNIA; DAN REDING and JAMES E.
MURRAY, Trustees;

Case No.

COMPLAINT

PENSION TRUST FUND FOR OPERATING
ENGINEERS; DAN REDING and JAMES E.
MURRAY, Trustees;

PENSIONED OPERATING ENGINEERS'
HEALTH AND WELFARE TRUST FUND; DAN
REDING and JAMES E. MURRAY, Trustees;

OPERATING ENGINEERS AND PARTICIPATING
EMPLOYERS PRE-APPRENTICE, APPRENTICE
AND JOURNEYMAN AFFIRMATIVE ACTION
TRAINING FUND; DAN REDING and JAMES E.
MURRAY, Trustees;

OPERATING ENGINEERS LOCAL UNION NO. 3
VACATION, HOLIDAY AND SICK PAY TRUST
FUND; DAN REDING and JAMES E. MURRAY,
Trustees;

HEAVY AND HIGHWAY COMMITTEE; and

OPERATING ENGINEERS LOCAL 3 OF THE
INTERNATIONAL UNION OF OPERATING

COMPLAINT
Case No.

1 ENGINEERS, AFL-CIO,

2 Plaintiffs,

3 v.

4 JK RYAN CONSTRUCTION INC., a California
5 Corporation; PATRICK JOHN RYAN individually
6 and doing business as RYAN'S CONSTRUCTION,

7 Defendants.

8 Parties

9 1. The Operating Engineers' Health and Welfare Trust Fund for Northern California (which
10 includes the Addiction Recovery Program, Inc.) ("Health Fund"); Pension Trust Fund for Operating
11 Engineers (which includes the Pension Plan for the Pension Trust Fund for Operating Engineers, the
12 Rehabilitation Plan, and the Operating Engineers Annuity Plan) ("Pension Plan"); Pensioned Operating
13 Engineers' Health and Welfare Trust Fund ("Pensioned Health Fund"); Operating Engineers and
14 Participating Employers Pre-apprentice, Apprentice and Journeymen Affirmative Action Training Fund
15 ("Affirmative Action Training Fund"); and the Operating Engineers Local Union No. 3 Vacation,
16 Holiday and Sick Pay Trust Fund ("Vacation Fund") (collectively referred to hereinafter as the "Trust
17 Funds"), are employee benefit plans as defined in the Employee Retirement Income Security Act of
18 1974 ("ERISA") § 3(3), 29 U.S.C. § 1002(3). Dan Reding and James E. Murray are Co-Chairmen of the
19 Joint Boards of Trustees of the Health Fund, Pension Fund, Pensioned Health Fund, and Affirmative
20 Action Training Fund and have authority to act on behalf of all Trustees of those Funds. Dan Reding and
21 James E. Murray are Co-Chairmen of the Joint Boards of Trustees of the Vacation Fund and have
22 authority to act on behalf of all Trustees of the Vacation Fund. The Trust Funds and their fiduciaries are
23 together referred to herein as "ERISA Plaintiffs" or "Plaintiffs."

24 2. The Heavy and Highway Committee is a Trust established under the Labor Management
25 Relations Act ("LMRA"), 302(c)(9), 29 U.S.C. § 186(c)(9).

26 3. Operating Engineers Local Union No. 3 of the International Union of Operating
27 Engineers, AFL-CIO ("Union") is a labor organization as defined in § 2(5) of the National Labor
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1 Relations Act ("NLRA"), 29 U.S.C. § 152(5), and is represented by counsel herein for the limited
2 purpose of collecting union dues owing as part of the subject contribution claims of Plaintiffs, and not
3 for any other cause of action. The Union expressly reserves its rights to pursue any other cause of action
4 on its own behalf.

5. JK Ryan Construction Inc., a California Corporation; and Patrick John Ryan, individually
6 and doing business as Ryan's Construction ("Defendants") are employers by virtue of ERISA § 3(5), 29
7 U.S.C. § 1002(5), and NLRA § 2(2), 29 U.S.C. § 152(2).

8 Jurisdiction

9. Jurisdiction exists in this Court over the claims asserted by ERISA Plaintiffs by virtue of
10 ERISA § 502, 29 U.S.C. § 1132, in that Plaintiffs seek to enforce the provisions of ERISA and the terms
11 of their plans, seek to enjoin the acts and practices which violate ERISA, seek equitable relief to redress
12 such violations, and seek all other appropriate relief under ERISA.

13. Jurisdiction exists in this Court over all the claims by virtue of LMRA § 301, 29 U.S.C. §
14 185, in that Plaintiffs seek to enforce the terms and conditions of a valid Bargaining Agreement.

15. To the extent jurisdiction over any claim does not exist under ERISA or the LMRA,
16 supplemental jurisdiction exists in this Court over such claims by virtue of 29 U.S.C. § 1367 in that they
17 arise out of a common nucleus of operative facts that form the basis of the federal claims asserted
18 herein, each of which has a substantial ground in federal jurisdiction.

19 Venue

20. Venue is conferred upon this Court by ERISA § 502, 29 U.S.C. § 1132. Where an action
21 is brought under ERISA § 502 in a district court of the United States, it may be brought at Plaintiffs'
22 discretion, in the district where the plan is administered, where the breach took place, or where a
23 defendant resides or may be found, and process may be served in any other district where a defendant
24 resides or may be found. ERISA Plaintiffs' Trust Funds are administered in this district at their principal
25 place of business in Alameda, California. Thus, jurisdiction and venue are properly grounded with this
26 Court.

27. Venue exists in this Court with respect to the claims under LMRA § 301(a), 29 U.S.C. §
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1 185, as this Court has jurisdiction over the parties, as the Union maintains its principal place of business
2 in this district, its duly authorized officers or agents are engaged in representing employee members in
3 this district, and the claims arise in this district.

4 Intradistrict Assignment

5 10. The basis for assignment of this action to this Court's Oakland Division is that all of the
6 events and omissions giving rise to Plaintiffs' claims occurred in the County of Alameda, where ERISA
7 Plaintiffs' Funds and the Bargained Plans are administered, and where Defendants therefore failed to
8 fulfill their statutory and contractual obligations to Plaintiffs.

9 Bargaining Agreements

10 11. Defendant Patrick John Ryan, on behalf of Defendant JK Ryan Construction Inc. entered
11 into the Independent Northern California Construction Agreement (the "Independent Agreement") with
12 the Union, which incorporates the current Master Agreement ("Master Agreement") between the Union
13 and the Signatory Associations. Pursuant to the Independent Agreement, Defendants are bound to the
14 current Master Agreement. Under the terms of the Independent Agreement, the principal shareholders of
15 Defendant JK Ryan Construction Inc. personally guarantee all amounts due herein. Plaintiffs are
16 informed and believe that Defendant Patrick John Ryan was the principal shareholder of Defendant JK
17 Ryan Construction Inc. The Independent Agreement and Master Agreement are collectively referred to
18 hereinafter as the "Bargaining Agreements." The Bargaining Agreements, which incorporate the terms
19 of the Trust Agreements establishing the Trust Funds ("Trust Agreements"), require Defendants to
20 provide employer contributions to Plaintiffs' Trust Funds, to the Union for union dues, and to the other
21 plans more fully described in the Bargaining Agreements. ERISA Plaintiffs are third-party beneficiaries
22 of the Bargaining Agreements.

23 12. Defendant Patrick John Ryan signed the Independent Agreement form in September 2015
24 and signed another Independent Agreement form in March 2017. In the 2015 Independent Agreement,
25 Defendant JK Ryan Construction Inc. listed itself as the "Individual Employer (Company Name)" in the
26 Independent Agreement and specifically stated "610851" as its Contractor's License number. Plaintiffs
27 are informed and believe that Contractor's License number 610851 is actually associated with

1 Defendant Ryan's Construction. By stating its license number in the Independent Agreement, Defendant
 2 Patrick John Ryan, individually and doing business as Ryan's Construction affirmed that they were
 3 bound to the terms of the Independent Agreement. Plaintiffs are informed and believe that Defendant
 4 Patrick John Ryan is the sole owner of Defendant Ryan's Construction. In addition, Plaintiffs are
 5 informed and believe that Defendant JK Ryan Construction Inc. and Defendant Patrick John Ryan,
 6 individually and doing business as Ryan's Construction do not maintain separate identities and hold
 7 themselves out as one another. Therefore, Plaintiffs are informed and believe that Defendant JK Ryan
 8 Construction Inc. and Defendant Patrick John Ryan, individually and doing business as Ryan's
 9 Construction are a single employer and/or are continuations or alter egos of one another. As such,
 10 Plaintiffs allege that Defendant Patrick John Ryan, individually and doing business as Ryan's
 11 Construction is bound to the Bargaining Agreements referenced above and is bound to all the
 12 requirements for JK Ryan Construction Inc. contained therein. In addition, in the Independent
 13 Agreement signed in March 2017, Defendant JK Ryan Construction Inc. listed itself as the "Individual
 14 Employer (Company Name)" in the Independent Agreement and specifically stated "1021855" as its
 15 Contractor's License number.

16 13. Under the terms of the Bargaining Agreements and Trust Agreements incorporated
 17 therein, Defendants are required to pay certain contributions to the Job Placement Center and Market
 18 Area Committee Administration Market Preservation Fund; the Operating Engineers Industry
 19 Stabilization Trust Fund; the Construction Industry Force Account; the Operating Engineers Local 3
 20 Heavy and Highway Trust (together referred herein as "Bargained Plans"). Plaintiffs' Boards of Trustees
 21 are assigned under the Bargaining Agreements to receive and administer monies due to these Bargained
 22 Plans.

23 14. Under the Bargaining Agreements and Trust Agreements, which are incorporated into the
 24 Bargaining Agreements and made binding on Defendants, Defendants are required to regularly pay to
 25 ERISA Plaintiffs, the Bargained Plans, and the Union, certain sums of money, the amounts of which are
 26 determined by the hours worked by Defendants' employees. Contributions are due on the fifteenth
 27 (15th) day of the month following the month in which hours were worked, and are considered
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1 delinquent if not received by the twenty-fifth (25th) day of that month. Defendants are also required,
2 pursuant to the Bargaining and Trust Agreements, to pay liquidated damages in the amount of ten
3 percent (10%) for each delinquent contribution, but in the amount of twenty percent (20%) for each
4 delinquent contribution which is the subject of litigation. Moreover, the Bargaining and Trust
5 Agreements provide that interest accrues on delinquent contributions at the rates reasonably set by the
6 Trustees from the date they become delinquent, which is the twenty-sixth (26th) day of the month in
7 which payment was due, until paid in full.

8 15. The Bargaining Agreements and Trust Agreements further require Defendants to
9 maintain time records or time cards, and to permit an authorized Trust Fund representative to examine
10 such records of Defendants as is necessary to determine whether Defendants have made full payment of
11 all sums owed to ERISA Plaintiffs. Should an audit of Defendants' records reveal Defendants have
12 failed to provide full and prompt payment of all sums due to Plaintiffs, Defendants must reimburse
13 Plaintiffs for the amounts due, including audit fees, in addition to any other obligations pursuant to the
14 Bargaining and Trust Agreements.

15 Factual Allegations

16 16. Defendants have failed and refused to comply with an audit of their payroll records for
17 the period from September 23, 2015 through June 30, 2018.

18 17. Defendants have also failed to report and pay contributions for hours worked by their
19 employees during the months of April 2018, July 2018, and February 2019 through May 2019.
20 Liquidated damages and interest are owed to Plaintiffs for the unpaid contributions for the above-
21 referenced months.

22 16. Plaintiffs are also entitled to recover any and all other contributions, and all liquidated
23 damages and interest on delinquent contributions not specified above, found due on timecards, audit, or
24 otherwise, including estimated contributions for any months Defendants fail to report to Plaintiffs,
25 through the time of Judgment. Plaintiffs reserve the right to conduct an audit to determine whether there
26 are any additional amounts due from Defendants.

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FIRST CAUSE OF ACTION

2 **For Audit Compliance, Payment of Delinquent Contributions, Interest, Liquidated Damages,**

3 **Attorneys' Fees and Costs Against Defendants**

4 17. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 16, above.

5 18. Defendants have a contractual duty to timely pay the required contributions to Plaintiffs
6 and the Bargained Plans, and to timely pay dues to the Union, pursuant to the Bargaining Agreements
7 and Trust Agreements. Defendants also have a contractual duty under the Bargaining Agreements, and
8 Trust Agreements to permit an audit of their records to determine whether they are making full and
9 prompt payment of all sums required to be paid by them to Plaintiffs, and to pay Plaintiffs all amounts
found due as a result of an audit, including audit fees.

10 19. In addition, Defendants have a statutory duty to timely make the required payments to
11 Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

12 20. By failing to make the required payments to Plaintiffs, Defendants breached the
13 Bargaining Agreements and Trust Agreements and is in violation of ERISA § 515, 29 U.S.C. § 1145,
14 and LMRA § 301(a). In addition, by refusing to permit an audit of its records, Defendants breached the
15 Bargaining Agreements.

16 21. Defendants' failure and refusal to pay the required contributions was at all times, and still
17 is, willful. Defendants continue to breach the Bargaining Agreements, and incorporated Trust
18 Agreements by failing to pay all amounts owed as alleged. Said refusal is unjustified and done with
19 knowledge and intent. In addition, Defendants' failure and refusal to permit the audit and pay the
20 required contributions was at all times, and still is, willful. Defendants continue to breach the Bargaining
21 Agreements, and incorporated Trust Agreements, by failing to permit the audit and pay all amounts
22 owed as alleged. Said refusal is unjustified and done with knowledge and intent.

23 22. ERISA Plaintiffs are without an adequate remedy at law and will suffer continuing and
24 irreparable injury, loss and damage unless Defendants are ordered specifically to perform all obligations
25 required on Defendants' part to be performed under ERISA, 29 U.S.C. §§ 1101-1381, the LMRA, 29
26 U.S.C. §§ 141-197, and the Bargaining Agreements and Trust Agreements, and are restrained from
27 continuing to refuse to perform as required thereunder.

23. This Court is authorized to issue injunctive relief based on the traditional standard. As set forth above, ERISA Plaintiffs have a strong likelihood of success on the merits. There is the possibility that ERISA Plaintiffs' Trust Funds and their participants will suffer irreparable injuries. The balance of hardships and advancement of public interest favor ERISA Plaintiffs.

24. This Complaint does not in any manner relate to statutory withdrawal liability that may or may not be assessed against Defendant. ERISA Plaintiffs expressly reserve the right to pursue any such withdrawal liability claims against Defendants as provided by ERISA Plaintiffs' Plan Documents, Trust Agreements, and the law.

Prayer

WHEREFORE, Plaintiffs pray as follows:

1. For an order,

(a) requiring that Defendants comply with their obligations to Plaintiffs under the terms of the Bargaining Agreements and the Trust Agreements;

(b) enjoining Defendants from violating the terms of those documents and of ERISA; and,

(c) enjoining Defendants from disposing of any assets until said terms have been complied with, and from continuation or operation of Defendants' business until said terms have been complied with.

2. For a judgment against Defendants as follows:

(a) Any unpaid contributions, due at time of Judgment, including those specified above as well as any other contributions determined as due by audit, timecards, or otherwise, including estimated contributions for any months Defendants fail to report to Plaintiffs, pursuant to ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A);

- i. To ERISA Plaintiffs and the Bargained Plans, in accordance with ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A) and the Bargaining Agreements;

ii. To the Union in accordance with the Bargaining Agreements.

(b) Liquidated damages on all late-paid and unpaid contributions in an amount

1 provided for under the Bargaining Agreements and Trust Agreements, and with respect to ERISA
2 Plaintiffs, ERISA § 502(g)(2)(c), 29 U.S.C. § 1132(g)(2)(c).

3 (c) Interest on all late-paid and unpaid contributions at the rates set in accordance
4 with the Bargaining Agreements the Trust Agreements, and ERISA § 502(g)(2)(B), 29 U.S.C. §
5 1132(g)(2)(B).

6 3. Plaintiffs' reasonable attorneys' fees and costs of this action, including any audit fees, in
7 accordance with ERISA § 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and (E); and in accordance
8 with the Bargaining Agreements for all Bargained Plans; and with LMRA § 301, 29 U.S.C. § 185, for all
9 Plaintiffs.

10 4. That the Court retain jurisdiction of this case pending compliance with its orders.

11 5. For such other and further relief as the Court may deem just and proper.

13 DATED: July 3, 2019

SALTZMAN & JOHNSON LAW CORPORATION

14 By: _____ /S/
15 Matthew P. Minser
16 Attorneys for Operating Engineers' Health And
Welfare Trust Fund for Northern California, et al.